

Addendum B

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH
CENTRAL DIVISION

THE SCO GROUP, INC.,)
Plaintiff/Counterclaim-Defendant,)
vs.) Case No.
INTERNATIONAL BUSINESS) 2:03-CV-294DAK
MACHINES CORPORATION,)
Defendant/Counterclaim-Plaintiff,)
_____)

BEFORE THE HONORABLE BROOKE C. WELLS

January 18, 2007

Motion Hearing

REPORTED BY: Patti Walker, CSR, RPR, CP
350 South Main Street, #146, Salt Lake City, Utah 84101

1 MR. SHAUGHNESSY: Nothing further, Your Honor.

2 THE COURT: Now I'm going to ask you, Mr.

3 Shaughnessy, to answer that question: What if anything is IBM
4 willing to do or do you have an obligation --

5 MR. SHAUGHNESSY: Your Honor, the day for asking for
6 that passed a long time ago. That discovery in this case is
7 closed. SCO has had that now for almost two years. And they
8 were the ones who came in and told you, Your Honor, that they
9 had to have this and that it would have the very information
10 you just described. We have given them detailed instructions
11 on how to use it.

12 And what you haven't heard, Your Honor, very
13 curiously, is SCO comes in and says, well, we haven't offered
14 evidence that, in fact, you can find this in SCO. What they
15 haven't done, Your Honor, is they haven't attempted to come in
16 and say to Your Honor in some evidentiary admissible form, we
17 tried it and we couldn't do it. But at the end of the day,
18 Your Honor, that day has passed. Fact and expert discovery in
19 this case are closed. To the extent that information was
20 important for those purposes, it should have been investigated
21 and looked into long, long, long before now.

22 MR. JAMES: Just, finally, Your Honor, and I don't
23 want to drag this out longer than it has to be, but it seems to
24 me that Your Honor has denied the motion in large part on Your
25 Honor's finding and belief that the evidence is available, that

1 it's not lost. And we've heard Mr. Shaughnessy say today that
2 it is available and it's not lost, although we have spent
3 literally hundreds of thousands of dollars trying to find that
4 kind of thing and we can't. They say it's easily findable.
5 Then Your Honor says, Mr. Shaughnessy, how about IBM, what is
6 their willingness to find that easibly findable information,
7 and we get the, well, we've represented to the Court it's
8 easily findable and we contend it's easily findable, and that's
9 the basis for the Court's rulings, but a year or two late.
10 Sorry, you're out of luck.

11 THE COURT: The standard I think is reasonably
12 available. I am going to ask IBM, in the spirit of
13 cooperation, Mr. Shaughnessy, to do what you can or have others
14 do it to see if you can assist in identifying it. That doesn't
15 mean that anything is going to change in terms of the deadlines
16 and the scheduling order cutoffs. But if there is somebody who
17 readily has that information, I would ask you to assist in
18 doing that.

19 MR. SHAUGHNESSY: Your Honor, if the Court would like
20 us to do that, I'm happy to undertake that. What I want to
21 make sure we're very, very clear about, Your Honor, is that we
22 are not reopening discovery.

23 THE COURT: I think I just said that.

24 MR. JAMES: I think Your Honor made that very clear.

25 THE COURT: I don't think that's open to question.

1 So with that having been said and, Mr. Shaughnessy, if you will
2 prepare a proposed order.

3 MR. SHAUGHNESSY: We would do that, Your Honor.
4 Would you like us to prepare orders on both motions or did you
5 address an order on the prior motion?

6 THE COURT: I did not ask. I will ask SCO to prepare
7 the order on the first motion.

8 MS. BORUCHOW: We would be happy to, Your Honor.

9 MR. SHAUGHNESSY: Thank you, Your Honor.

10 THE COURT: Thank you. And we'll be in informal
11 recess. Thank you.

12 (Whereupon, the proceeding was concluded.)
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